BANK NEGARA MALAYSIA

v.

THE CO-OPERATIVE CENTRAL BANK LTD.

HIGH COURT KUALA LUMPUR
DATO' HJ. ABU MANSOR BIN ALI J.
[ORIGINATING MOTION NO.
R8-25-12-89]
2 SEPTEMBER 1993

RECEIVERS & MANAGERS: Application for discharge of receivers and managers - Order for indemnity sought by receivers and managers - Application of common law principles - Whether receivers and managers have locus to appear at the hearing of the application for their discharge - Whether the Court can provide indemnity to receivers in the order for their discharge.

By an Order of the High Court dated 7 March 1989 made pursuant to the Essential (Protection of Depositors) Regulations 1986, Tuan Haji Zainal Abidin Putih and Tuan Haji Ahmad Kamal bin Abdullah Al-Yaffi both of Ms. Hanafiah Raslan Mohamed & Co, Insolvency Services, were appointed Receivers Managers of the Co-Operative Central Bank Ltd. (CCB) to manage the affairs and Property of CCB.

By a Notice of Motion dated 8 April 1992, Bank Negara sought an order, *inter alia,* that the said Tuan Haji Zainal Abidin Putih and Tuan Haji Ahmad Kamal Al-Yaffi be discharged as the Receivers and Managers of CCB, essentially on the grounds that there will be a saving of considerable costs of the management of CCB if the services of the Receivers and Managers be discharged. The Receivers and Managers offered absolutely no objection to Bank Negara's application seeking their discharge, but sought a suitable provision in the order of discharge, for them, (that is, the Receivers & Managers), to be indemnified and kept indemnified againts all liabilities in and about the work carried out by them in the discharge of their duties as such Receivers and Managers.

Held:

[1] The Receivers & Managers have *locus* to appear in the application to discharge as they have been served with the application.

[2] On the consideration that there will be a considerable saving in costs of the management of CCB if the Receivers and Managers are discharged, the Court will exercise its discretion to have the Receivers & Managers discharged.

[3] The Court can understand the anxiety felt by the Receivers and Mangers and it is only right that they be placed in the proper position where they stood in the discharge of their duties at the relevant time.

[4] The appointees of Bank Negara be substituted for any liabilities, present and future found to be properly incurred by the Receivers & Managers of CCB.

[5] The Court acknowledges that indemnity is to be given to the Receivers & Managers of CCB and that such indemnity is to be from the assets of CCB.

[Orders accordingly. Costs of the proceedings to be borne by the applicant].

Legislation referred to:

Essential (Protection of Depositors) Regulations 1986, Regulation 9(1)(b)

For Bank Negara Malaysia - Zaki Tun Azmi (Benjamin Yean and S. Thomas with him); M/s. Rashid & Lee

For the Receivers/Managers - N. Chandran (P. Jayasingam with him); M/s. Adnan Sundra & Low

For 1st and 2nd Intervenors - K. Anantham and Vinayaga Raj Rajaratnam; M/s. Skrine & Co.

For (1) Malaysian Co-operative Supermarkets Society Ltd., (2) Railway Co-operative Thrift & Loan Society Ltd. (3) Railway Co-operative Multi-purpose Society Ltd. (4) Co-operative Union of Malaysia - A. Kanesalingam; M/s. Kanesalingam & Co.

For 289 ex-employees of CCB - Gengadharan; M/s. Genga Maha Wong & Co.

For Wong Pot Heng & Hj. Rosli Hj. Kamaruddin - Lakshmi Lucy Ramanathan; M/s. V.K. Lingam & Co.

For CCB Executive Union - P. Kuppusamy; M/s. Kuppusamy & Co.

JUDGMENT

Hj. Abu Mansor bin Ali J:

In this notice of motion enclosure (6) dated 8 April 1992 the applicant applied for the following orders:

(1) That Tuan Haji Zainal Abidin Putih (NRIC No. 0496961) and Tuan Haji Ahmad Kamal bin Abdullah Al-Yaffi (NRIC No. 0756776) of Messrs Hanafiah Raslan Mohamed & Co., Insolvency Services, Level 5, Block C (South) Pusat Bandar Damansara,

Damansara Heights, P.O. Box 11040, 50734 Kuala Lumpur, the receivers appointed by the Court on 7 March 1989 to manage the affairs and properties of The Co-operative Central Bank Ltd. (CCB) be discharged with affect from the date of the order of Court granting such discharge;

(2) The said receivers do surrender and deliver into the possession of Bank Negara Malaysia (BNM) or the persons appointed by it under regulation 9(1)(b) of the Essential (Protection of Depositors) Regulations 1986 all books, documents, accounts, properties and monies of CCB or which relate to the affairs and business of CCB, as are in the possession of the receivers or are under their custody or control;

(3) The said receivers do furnish to BNM, or to persons appointed by it under regulation 9(1)(b) from time to time, such information and clarification in relation to the period during which the Receivers were in office, where such information or clarification is required by BNM, or the persons so appointed for the purpose of assuming control and carrying on the business of CCB;

(4) The said receivers do complete and file with this Court the final accounts of CCB in respect of the period during which they were receivers of CCB, and that such accounts be filed within 30 days of their discharge taking effect, or such longer period as this Court may allow;

(5) The applicant's costs in respect of this application and incidental thereto shall be paid out of the assets of CCB;

(6) The applicant be at liberty to file afresh;

(7) All other relief that the Court deems fit and just.

The issue before this Court is an application for discharge of Receivers and Managers and if the Court is so minded to give the order, could the Court give the indemnity in the sum prayed for? The Counsel for the Receivers and Managers, Mr. Chandran, contends that there is nothing in the 1986 Regulations or the Amended Regulations dealing with this matter and therefore common law principles and common law decisions can be applied.

There is raised the question of the *locus* of the Receivers and Managers to appear before me in this proceedings and the submission of learned Counsel for the applicant, Bank Negara, Y.B. Dato' Zaki Tun Azmi is to the affect that they have not, and that if they do appear, then cost must be on them. I uphold the submission of Mr. Chandran that they had been made parties and they had been duly served, I am unable to say that they have no *locus*. I say they have *locus* to appear in this application.

Should this Court grant the application of the applicant, Bank Negara? If so, should the discharge be with the provision of the immunity in the sum prayed for. It is common ground that it is in the discretion of this Court whether these appointed Receivers and Managers should be discharged. It is also common ground that there is no real objection that they should not be discharged in the circumstances of the facts of this case.

One very good reason why I should grant the discharge is the considerable saving in cost of management if the services of the Receivers and Managers are discharged. The intention of the government in bringing the Regulations is clear that the CCB must be nurtured to health and the depositors' welfare is taken into account. This consideration alone is sufficient and that this Court will and here exercise its discretions to have the Receivers and Managers discharged. The remaining issue is should the discharge be with indemnity granted in the sum prayed for. The *onus* here is for the receivers to say so.

As has been stated by Mr. Chandran, the Receivers and Managers have absolutely no objection to the applicant's application but what they would ask for is that this Court makes a suitable provision in the order of discharge for them to be indemnified and kept indemnified in all the works carried out by them in and about the discharge of their duties as such Receivers and Managers.

What is the law? Mr. Chandran has taken us through the numerous decided cases and I do apply them that the Receivers and Managers are entitled to be indemnified and they are to be so of indemnified out of the assets of CCB. Everyone of the authorities seem to agree on this.

However, what the receivers want in the prayers asked for under (a) to (d) is to get the Court to provide expressly in the order for discharge a consequential order that the Receivers and Managers be indemnified and kept indemnified in the sum prayed for against any liabilities that

they may have to answer (excluding liabilities for any negligence on their part) in the discharge of their duties.

If I understand the Counsel for the Receivers and the Managers' submission, they need this consequential order because there are present pending claims involving personal liability of the Receivers and Managers almost acknowledged by the applicant in enclosure (6A) and in particular paras 22 and 24. The Receivers and Managers say, since the stand of the applicant is not clear, it is not sufficient that, in the required discharge, the applicant merely says that the discharge will not affect their being parties to the proceeding in their individual capacities. Since this is the stand taken by the applicant this necessitated the Receivers and Managers seeking the order they are seeking as they are entitled to look to the assets of CCB. The applicant's submission is that the Receivers and Managers' right of indemnity againts assets of CCB can only be in regard to liabilities properly incurred in the course of their duties as Receivers and Managers.

After having considered carefully the position of the Receivers and Managers, the Court could understand the anxiety felt by them and it is only right that they be placed in the proper position where they stood in the discharge of their duties at the relevant time.

The termination of the services of the ex-employees was done clearly for the benefit of CCB and rightly should be done at the relevant time, bearing in mind the state of financial position of CCB. As for their authority to do so, they were given express power to so terminate the services of the employees in circumstances deemed necessary for reason of saving costs and in order to nurture to health that organisation. The Court accepts this clear reason for their so acting. The applicant, Bank Negara, cannot of course the seemed to want to have the benefit of their duties without wanting to shoulder the burden arising from their correct course of action of cost savings consideration.

Understanding the position of the Receivers and Managers and the law involved, the Court feels that it is fair that the applicant, having had the benefit of the good services of the Receivers and Managers, should be clearly made to shoulder the obligations either on itself, or, I am more minded, correctly it should be the CCB and in this regard I have considered the Receivers and Managers alternative application in enclosure (20) paragraph 22 where the Receivers and Managers are seeking an express order in the alternative that Bank Negara's appointees be substituted their places for any liabilities, present and future and an order be made for such substitution. I have considered this order I would make to be most fair, in my view, since it is only right that the new Receivers and Managers should continue to be liable for the acts and duties of his predecessors in claims againts the assets of CCB.

I therefore grant the discharge in the terms of the orders prayed for by the applicant in enclosure (6). I refuse the Receivers and Managers' application in the form asked for in para 39 enclosure (11) and, in its place, I make an alternative order prayed for in enclosure (20) paragraph 22 that the new appointees be substituted for any liabilities, present and future, found to be properly incurred by the present Receivers and Managers. In giving this order prayed for the Court merely acknowledges that indemnity is given to the present Receivers and Managers and it is to be from the assets of CCB.

In respect of enclosure (19) para (11) the accounts prayed for are to be filed within 90 days and to be served on all concerned parties.

As for costs, the costs of this proceedings it is to be borne by the applicant as I find it was necessary for the present Receivers and Managers and others to be heard.